*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION No.9364 OF 2004

%21-09-2004

MAHAVIR PERSHAD

..PETITIONER

Vs.

$ THE COLLECTOR, HYDERABAD DISTRICT, HYDERABAD AND ANOTHER

..RESPONDENTS

! COUNSEL FOR PETITIONER: MR.M.V.S.SURESH KUMAR
^ COUNSEL FOR RESPONDENTS: G.P. FOR REVENUE (GENERAL)

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>HEAD NOTE:

?CASES REFERRED:

1. AIR 1982 SC 1081
2. 1997 (4) ALT 428 (DB)
3. 2003 (3) ALD 2
4. 2003 (5) ALD 421
5. 1984 (1) APLJ 219 (DB)
6. 1988 (1) ALT 716

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 9364 of 2004

Between:

Mahavir Pershad, S/o Late. Sri Madanlal, R/o.8-2-616/1/B/3A,

Road No.11, Banjara Hills, Hyderabad.

..... PETITIONER

AND

1. The Collector, Hyderabad District, Hyderabad.
2. The Mandal Revenue Officer, Shaikpet Mandal, Road No.2,

Banjara Hills, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to declare the proceeding No.D/5843/03 dated 21.05.2004 issued by the 2nd respondent herein as without jurisdiction, illegal and arbitrary by issuing any appropriate writ, order or direction.

Counsel for the Petitioner: MR.M.V.S.SURESH KUMAR

Counsel for the Respondents: GP FOR REVENUE (General)

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.9364 OF 2004

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ORDER:

The petitioner claims that he purchased a building bearing No.8-2-616/1/B/3A, situated at Road No.11, Banjara Hills, Hyderabad under

registered sale deed dated 18.07.1992 from Dr.P.Neena Desai. As per the sale deed executed by Dr.Neena Desai in favour of the petitioner the land marked as Plot No.3A is comprised in Survey No.129/69 situated at Road No.11 of Banjara Hills, Hyderabad and the area is shown to be 940 square yards but in the preamble portion of the sale deed it is mentioned that the vendor of the petitioner purchased plot No.3A admeasuring 461 square yards in Survey No.129/69 forming plot No.5 from her vendor Devanand Singh. The petitioner alleges that the land originally belonged to Md.Mirza, who sold the land in favour of Hasmath Raza in 1953, that after death of Hasmath Raja, his sons divided the property into house plots and sold plot No.3A to K.Srinivas Reddy under registered sale deed 22.03.1991, who inturn sold to Devanand Singh on 04.07.1984. The petitioner's vendor purchased the said plot No.3A admeasuring 461 square yards under registered sale deed 09.06.1998, that since 1981, in all the sale deeds the area of plot No.3A is shown as 940 square yards and that the petitioner's vendor obtained necessary building permission from Municipal Corporation of Hyderabad in April, 1989 and constructed the building.

The Mandal Revenue Officer, Shaik Pet Mandal, Hyderabad issued summons on 05.09.1992 to the petitioner informing that he is found to be in illegal possession of Government land in T.S.No.4/part and that a Land Grabbing Case is being instituted under the provisions of A.P.Land Grabbing (Prohibition) Act, 1982 (the LGP Act, for brevity). The petitioner was directed to produce documentary evidence like title deeds to prove his ownership within three days, failing which the case will be initiated under the LGP Act. The Mandal Revenue Officer also sent a notice under Section 7 of A.P.Land Encroachment Act, 1905 (the LE Act, for brevity) bearing No.D/5717/92 dated 16.09.1992 calling upon the petitioner to show cause as to why action should not be taken under Section 6 of LE Act. The petitioner allegedly sent replies on 23.09.1992 and 06.09.1993 giving particulars of the title to the property. In the second letter/explanation, the petitioner also undertook to pay the amount determined by the Government towards cost of the land, if any portion of the land in occupation is the property of the Government. The first respondent by proceedings dated 03.01.2004 rejected the request of the petitioner for regularization under G.O.Ms.No.508 dated 20.10.1995 read with G.O.Ms.No.972 dated 04.12.1998 and G.O.Ms.No.515 dated 19.04.2003. The petitioner alleges that he has not sought any regularization of the possession under the said Government Orders and that the first respondent misread the representation dated 06.09.2003.

The Mandal Revenue Officer, Shaikpet, second respondent herein, issued a notice dated 02.12.2003 under Section 7 of the LE Act calling upon the petitioner to show cause as to why he should not be evicted from the Government property in Survey No.403 of Shaikpet village admeasuring 774 square meters with RCC building. The petitioner submitted explanation on 29.12.2003, *inter alia,* contending that he purchased the property measuring 940 square yards under registered sale deed that he has been paying all the property taxes and that there is abundant evidence to establish title over the property. The petitioner also contended that the action under the LE Act is without jurisdiction and that the proposal for regularisation is pending before the Government. Thereafter as noticed hereinabove, the District Collector, the first respondent, by proceedings dated 03.01.2004 rejected the request of the

petitioner. The second respondent considered the representation of the petitioner dated 29.12.2003 and issued proceedings dated 21.05.2004 as well as notice under Section 6 of the LE Act directing the petitioner to vacate the land in Survey No.403 admeasuring 774 square meters of Shaikpet village. The petitioner filed the present writ petition challenging the orders/proceedings of the second respondent dated 21.05.2004 issued under Section 6 of the LE Act.

This Court admitted the writ petition on 28.05.2004 and suspended the impugned order for a period of two months. The matter came up before this Court on 26.08.2004 for extension of interim orders. The interim order was extended from time to time and the matter was heard finally with the consent of the learned counsel for the petitioner and the learned counsel for respondents. The respondents have filed counter affidavit, to which, the petitioner also filed reply affidavit today.

The Mandal Revenue Officer, Shaikpet, in his counter affidavit contends that the petitioner is trying to mislead the authorities and this Court, to grab the Government land under the guise of the sale deed referable to different private lands in Survey No.129/69. A categorical averment is made that the land in Survey No.129/69, which the petitioner purchased from Dr.P.Neena Desai is a private land, on which the Government has not right but the land in Survey No.403 of Shaikpet village with RCC building is not a private land. It is stated that the land in T.S.No.4/part, Block R, Ward No.11 (correlated to Survey No.403 of Shaikpet village) is classified as Poramboke land known as Antagari Tank as per TSLR and revenue records maintained by the Government and this land is different from the land in Survey No.129/69.

It is further stated in the counter affidavit as follows. The petitioner purchased land admeasuring 774 square meters in Survey No.129/69 from Dr.P.Neena Desai on which the Government has no right. The impugned notice is issued in relation to the land admeasuring 774 square meters in T.S.No.4/part, Block R, Ward No.11 correlated to old Survey No.403 of Shaikpet village. The said land is classified as Poramboke land and known as Antagari tank as per TSLR and revenue records. The Mandal Revenue Officer pursuant to earlier notice dated 16.09.1992 passed final orders for eviction under Section 6 of the LE Act to an extent of 726 square meters in T.S.No.4/part. Subsequently, the petitioner submitted a representation on 06.09.2003 to the District Collector for regularization of the land belonging to the Government under his occupation. The said representation was rejected by the District Collector on 03.01.2004. Pursuant to the notice dated 02.12.2003 in relation to the land in Survey No.403, the petitioner submitted explanation and impugned order is passed after duly considering the representation. The petitioner has no right to claim the land occupied by him. The writ petition is not maintainable against the order under Section 6 of LE Act as the petitioner has an effective alternative remedy before Revenue Divisional Officer under Section 10(1) of the LE Act.

The petitioner in reply affidavit while denying the correctness of the averments in the counter affidavit filed on behalf of the respondents states that the land purchased by the petitioner in Survey No.129/69 and the allegation that the land is situated at Survey No.403 of Shaikpet village is denied. He also denies the allegation that the

Mandal Revenue Officer passed final orders pursuant to notice dated 16.09.1992. He also states that he has not encroached upon any land in Survey No.403 of Shaikpet village and that the second respondent issued notice on 14.12.1994, under the provisions of A.P.Non Agricultural Lands Assessment Act, 1963 (the NALA Act, for brevity) and that this would show that the property in plot No.3A is situated in Shaikpet village, Road No.11, Banjara Hills, Hyderabad. The petitioner also contends that having issued notice to the petitioner, it is not open to the second respondent to state that the petitioner is in possession of Survey NO.403.

Learned counsel for the petitioner Sri M.V.S.Suresh Kumar vehemently contends that the impugned order issued by second respondent is without jurisdiction and hence the availability of alternative remedy of appeal under Section 10 of the LE Act is not a bar for invoking jurisdiction under Article 226 of the Constitution of India. Secondly, he would urge that the petitioner and his predecessors in title have been in possession of the property for more than four decades, which gives raise to a genuine dispute as to title that when the Government does not dispute petitioner's possession for long time, resort to summary proceedings under the LE Act is impermissible in law. He placed strong reliance on oft cited decision of the Supreme Court in **Government of A.P. v T.Krishna Rao** and the decision of the Division Bench of this Court in **District Collector, Rangareddy v K.Narasing Rao**. The learned counsel has taken this Court through various documents filed along with the writ petition as well as the additional documents filed today.

The learned Assistant Government Pleader for Revenue (General) Sri Surya Kiran with equal vehemence submits that the impugned order is issued in relation to the land admeasuring 774 square meters in Survey No.403 of Shaikpet village (T.S.No.4/part, Block R, Ward No.11) and the petitioner has purchased the land in Survey No.129/69 and therefore the petitioner cannot claim any title over the Government land in Survey No.403. He has also placed reliance on sketch showing encroachment particulars prepared by the Mandal Revenue Officer. He also placed reliance on the decision of this Court in **Raidurg Cooperative House Building Society Ltd., v Government of A.P.** and **R.Jayasimha Reddy v Government of A.P and another** in support of the contention that mere long possession does not give raise to dispute requiring the Government to avail the common law remedy for declaration of the title.

The short question is whether the writ petition is maintainable in view of the availability of effective alternative remedy under Section 10 of the LE Act? Incidentally a question would also arise whether the revenue officials were justified in invoking the summary procedure under the LE Act for evicting the petitioner from the Government land on the ground that he is an encroacher.

The respondents claim that the land in Survey No.403 corresponding to T.S.No.4, Block R, Ward No.11 known as Antagari tank is a Government land. In 1992, by a summons dated 05.09.1992, the Mandal Revenue Officer and Executive Magistrate of Golkonda, in whose jurisdiction initially, this land was situated, asked the

petitioner to produce the documentary evidence. He was also informed that the land on which the petitioner constructed a house is in T.S.No.4/part in Ward No.11. The same was followed by a notice under Section 7 of the LE Act showing that the petitioner has encroached Government land in T.S.No.4/part in Ward No.11 admeasuring 726 square meters. In response thereto, the petitioner submitted a representation on 24.09.1992. Though the petitioner denies, it is a case of the Revenue Department that after considering the said representation, the Mandal Revenue Officer passed an order under Section 6 of the LE Act. The petitioner submitted yet another representation on 06.09.1993 requesting the District Collector not to disturb the possession and enjoyment of the land and that he is willing to pay the amount as may be found payable. The following paragraphs from his representation need to be noticed.

It is further submitted that the taxes, cess and demands were duly discharges to by the enjoyers of the property and as such there was no element of doubt and or lack of bonafides in enjoyment of the property as referred to above. Having regard to the above facts and circumstances, it is earnestly requested to you SIR, to review the action of the M.R.O., Golkonda Mandal, taken under proceedings in file No.D/5717/92, being under your superintendence and action if any further proposed may be withdrawn in the interest of JUSTICE.

AN EARLY CONSIDERATION AND ACTION will highly be appreciated. Since the undersigned is not aware of the town survey undertaken, and if the undersigned is not lawfully entitle to enjoy any portion of the land, an appropriate orders may be passed in this regard and the undersigned undertakes to pay all such amount as may be found payable as per law and directives of the state government issued in this regard from time to time, so that, the land standing possession & enjoyment may not be disturbed, which in turn results in irreparable loss & injury.

The petitioner refers to the proceedings of the Mandal Revenue Officer, Golkonda in file No.D/5717/92 and the petitioner requests the District Collector to review the action of the Mandal Revenue Officer. In view of the same, it is reasonable to draw an inference that the petitioner is well aware of the proceedings issued under Section 6 of the LE Act. The above mentioned representation of the petitioner for regularisation was however not disposed of.

The Mandal Revenue Officer, Shaikpet (it appears that the land in question came within the jurisdiction of Shaikpet Mandal subsequently) issued notice under Section 7 of the LE Act calling upon the petitioner to show cause as to why he should not be evicted from the Government land admeasuring 774 square meters in Survey No.403 of Shaikpet village. The petitioner submitted a representation on 29.12.2003 tracing his title to the land in Survey No.129/69. Here it may be noticed that the petitioner's vendor purchased only 461 square yards from her vendor T.Devanand Singh. As per the sale deed dated 18.07.1992, the petitioner's vendor allegedly acquired 479 square yards of the land on the southern side of the plot and was in possession and enjoyment till the date of execution of the sale deed. There is no proper explanation as to how the petitioner's vendor came to acquire 479 square yards presumably in Survey No.129/69, Banjara hills. Indeed, in his affidavit accompanying the writ petition, the petitioner admits that the total area of plot No.3A is 461 square yards but since 1981 onwards the plot is being shown as

admeasuring 940 square yards.

The submission of the learned counsel for the petitioner that having regard to the long possession held by the petitioner, the Government cannot resort to summary proceedings and the encroachment act, but must file a suit for declaration of title, cannot be accepted.

In **Government of A.P. v T.Krishna Rao** (supra), the Supreme Court observed thus:

The conspectus of facts in the instant case justified the view that the question as to the title to the three plots cannot appropriately be decided in a summary enquiry contemplated by Sections 6 and 7 of the Act. The long possession of the respondents and their predecessors-in-title of these plots raises a genuine dispute them and the Government on the question of title, remembering especially that the property, admittedly, belonged originally to the family of Nawab *Habibuddin* from whom the respondents claim to have purchased it. The question as to whether the title to the property came to be vested in the Government as a result of acquisition and the further question whether the Nawab encroached upon that property thereafter and perfected his title by adverse possession must be decided in a properly constituted suit

(emphasis supplied)

In **Special Deputy Collector v Konda Lakshman Bapuji**, a Division Bench of this Court observed as under.

….. The occupation of the property by the writ petitioners being open and for an appreciable length of time as observed by the Supreme Court can be taken *prima facie* to have a bona fide claim to the property requiring an impartial adjudication according to the established procedure of law. Since there is a *bona fide* dispute of title between the Government and the writ petitioners it must be adjudicated upon by the ordinary Courts of law. The Government cannot decide such questions unilaterally in its own favour and evict them summarily on the basis of such decision…

In **Shivalingappa v State of A.P.**, this Court considered the decision of the Supreme Court in **Government of A.P. v T.Krishna Rao** (supra) and **Special Deputy Collector v Kondala Lakshman Bapuji** (supra) and came to the conclusion that those decisions do not say that whenever persons sought to be evicted from the land claim from possession to be not unauthorized, the Government should be compelled to go to civil Court and that they do not lay down any general law preventing the Court applying the provisions of the LE Act. The Court further observed:

In case the occupant is not found to be in unauthorized occupation, it is clear that the provisions of the Act cannot have any application. **Occupation can become unauthorized if it is not traced in its origin to the legal owner or is not perfected by adverse possession. This Court cannot in my opinion treat every kind of occupation which is claimed by the encroacher as not unauthorized to be *bona fide.* Bonafides require more solid foundations to rest than mere claims. Otherwise the application of this Act would merely depend upon the consent of the encroacher, who is sought to be evicted. Obviously the enforcement of the Act cannot be made to depend upon the consent of the person who is sought to be evicted.** On the other hand, if there is a *bona fide* dispute between the parties, about the nature of the occupation, then such a dispute takes the matter out of the provisions of this Act. Then the summary proceedings provided by the Act being wholly inadequate to decide the title of the parties should not be allowed to be put into operation. Beyond this I do not think it is possible to lay down any general proposition of law that will have universal application to all such cases arising under this Act. Some cases say that the occupation should be of recent origin for allowing this Act. Some cases say that the occupation should be of recent origin for allowing this Act to be put into force. I cannot agree. If the Act were to be applied it cannot be given

this meaning to this Act. **In my opinion this Court cannot legally speaking restrain the Government from applying this Act on the ground that the encroacher has been there for a long period of time. Long occupation which is not ripened into adverse possession cannot be a ground to refuse enforcement. Time is not in those circumstances capable of creating a *bona fide* dispute or title. The Court must always be conscious of the fact that what was involved in such cases is the higher duty of this Court to protect public property from the land grabbers and that it should not shun to discharge this duty to protect the public property even at the cost of causing inconvenience though not injustice to an honest individual litigant. It is not as though that the petitioner has no remedy. He can, by way of a suit, establish his title to the property.**

(emphasis supplied)

In **Raidurg Cooperative House Building Society Ltd., v Government of A.P.** (supra) and **R.Jayasimha Reddy v Government of A.P and another**, I considered the question whether in all cases, the Government ought to seek a declaration of title in Civil Court when there is an allegation of possession for long years. When the person in possession expressly or impliedly accepts to the title and ownership of the Government to the property, it is not necessary for the Government to file a suit again. In **Raidurg Cooperative House Building Society Ltd., v Government of A.P.** (supra), this Court held as under:

… As rightly contended by the learned Advocate General, the State has an option to avail any of the remedies available under law including the Land Encroachment Act. When the land was surveyed as Government poramboke land and Revenue records show as such, the petitioners cannot allege long standing occupation when pattas given to Chandni Begum and Sonabai are not genuine and incorrect. Merely placing reliance on some communications among various officials, it cannot be said that there is a *bona fide* and genuine dispute of title. In a given case even if there is evidence of showing the possession of a person, it cannot be said that there is *bona fide* dispute. Long standing possession is one of the factors and the same cannot be the only factor to compel the Government to go and avail remedy of civil suit.

In the instant case, since 1992, the Mandal Revenue Officer, Golkonda and thereafter Mandal revenue Officer, Shaikpet initiated action against the petitioner under the LE Act in respect of the land in T.S.No.4/part correlated to old Survey No.403 of Shaikpet village. What was purchased by the petitioner under registered sale deed dated 18.09.1992 from Dr.P.Neena Desai is the land in Survey No.129/69. Even in respect to that land admittedly the title of the vendor of the petitioner in respect of 479 square yards towards southern side of plot No.3A is not clear and the petitioner admits this in reply affidavit. Further, the notice issued by the Mandal Revenue Officer under the NALA act also does not support the contention of the petitioner. The same is in respect of other property and the same is not in relation to the land in respect of which proceedings under the LE Act are initiated. Therefore, it cannot be said that there is a *bona fide* dispute between the Government and the writ petitioner. Secondly, the petitioner in his representation dated 06.09.1993 requested the District Collector, Hyderabad to regularize the possession of the petitioner, which was rejected by the District Collector on 03.01.2004. The petitioner in the said representation, as extracted supra, admits that he is not aware of the town survey undertaken and therefore he requested District Collector to permit him to

continue in possession and if he is not lawfully entitle to enjoy a portion of the land.

Learned counsel for the petitioner placed strong reliance on the judgment of the Division Bench in **District Collector, Rangareddy v K.Narasing Rao** (supra), in support of his point that resort to summary proceedings under LE Act is impermissible when a person is in possession of the land for a long time and *bona fide* claims title. After perusing the decision of the Division Bench, I am of the opinion that the decision does not support the learned counsel for the petitioner. It would show that the Division Bench categorically laid down that only in the event of *bona fide* dispute, the Government land can be relegated to suit. Otherwise, it is permissible for the Government to resort to provisions of the LE Act. The Division Bench after referring to **Government of A.P. v T.Krishna Rao** (supra) made the following observations which are apposite.

….. What may finally be relevant in such a case in issue is whether some one is exercised by him openly. If such possession is exercised for an appreciable length of time, one can *prima facie* accept the *bona fide* of the claim, otherwise, the claim may not be deemed without there being adjudication to be *bona fide.* ….. What thus flows from the above, in our considered view, is that primary concern will be to see whether there is a *bona fide* claim of title and there are reasonable grounds to *prima facie* hold that the title to the property is in dispute and as such that a primary (sic.summary) procedure for eviction should be avoided.

In the present case there is material; to *prima facie* - hold that the land, which was purchased by the petitioner and the land in respect of which the Government initiated action under the LE Act are different. Therefore, the petitioner cannot rely on the principle laid down in **Government of A.P. v T.Krishna Rao** (supra). In any event as held by this Court, mere long possession by a person in respect of Government land cannot be a ground to compel the Government to file a suit. In a case where a person claims the land belonging to him by reason of a conveyance or long possession and such person approaches the Government or Governmental authority for regularization of occupation offering to pay the market value, a reasonable inference can be drawn that there is no *bona fide* dispute and resort to provisions of the LE Act cannot be invalidated.

Whether the petitioner's occupation of the land in question is objectionable encroachment or unobjectionable encroachment are the matters to be decided by the authorities under the Act. The second respondent, Mandal Revenue Officer, has already decided the matter and the law provides an effective efficacious alternative remedy. Therefore, if so advised the petitioner may avail remedy under Section 10 of the Act by filing appeal before the competent jurisdictional special grade Deputy Collector within a period of two weeks from the date of receipt of a copy of this order. As and when such appeal is filed, the appellate authority shall entertain the appeal and pass appropriate orders without in any manner being influenced by the observations made hereinabove.

The writ petition, with the above observations, is dismissed and there shall be no order as to costs.

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(V.V.S.RAO,J)

21.09.2004.

pln

Note: LR copy be marked.

(By order)

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To

One fair copy to the Hon'ble Mr.Justice V.V.S.Rao (for his Lordships kind perusal)

1. The Collector, Hyderabad District, Hyderabad.

2. The Mandal Revenue Officer, Shaikpet Mandal, Road No.2, Banjara Hills, Hyderabad.

3. 8 LR copies.

4. The Mandal Revenue Officer, Golconda, Hyderabad.

5. Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

5. The Secretary, A.P.Advocates Association Library, High Court Buildings, Hyderabad.

6. 2 CCs to the G.P. for Revenue, High Court Buildings, Hyderabad (OUT).

7. 2 CD copies.